

Tulchin, Matt

From: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Sent: Monday, June 3, 2024 7:58 PM
To: Tulchin, Matt
Cc: Duprey, Michelle; Matthew Lindenbaum; Donna Tillis; Soren Young; Rodriguez, Orlando; Whitaker, Bethel
Subject: RE: Amended 26(f) Report (Draft 05.24.24).docx

Matt,

Defendants just agreed to a schedule that provided for completion of fact discovery by September 3. If Defendants knew that they were not willing to even serve their responses and objections until July 3 – 60 days before the end of fact discovery – they should not have committed to that date. Although I have offered for Defendants to conduct a rolling document production, I will note that you have not committed to Defendants completing their document production by July 3 even with the proposed extension. While I appreciate your offer to ask the court to revisit the discovery schedule, the Federal Rules and the schedule in this case are quite clear on the timing of your discovery responses.

The reason the public records request is relevant is because Plaintiffs' document requests are generally not new. We sent many of them in the form of FOIA requests approximately 5 months ago. So while the agencies or custodians may handle the FOIA requests directly, those are your clients in this case, and they have had the opportunity to investigate what documents they have or don't have for the last 5 months. These requests should come as no surprise to Defendants.

Plaintiffs are willing to agree to a 10-day extension for Defendants to serve their responses and objections to Plaintiffs' document requests. Plaintiffs are also willing to provide Defendants with additional time beyond the 10-day extension to complete their rolling document productions, as long as it leaves a reasonable amount of time to complete fact discovery by September 3.

Best,
 Rob



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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Monday, June 3, 2024 6:02 PM
To: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum <matthew.lindenbaum@nelsonmullins.com>;

Donna Tillis <donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>; Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>

Subject: Re: Amended 26(f) Report (Draft 05.24.24).docx

Rob,

I must admit that I am at a bit of a loss here. I indicated to you weeks ago - prior to the entry of any discovery order in the case - that Defendants would need an extension of time regarding plaintiffs' first document requests. And I followed up last week by asking you for a 30 day extension.

We are willing to try and get you objections to your numerous, overly broad requests within 10 days. But we will not be in a position to produce any documents. If you don't want to grant the 30 day extension for us to respond to your first document requests, then please let us know so that we can seek appropriate relief from the court.

And I don't see what your public records requests have to do with anything. As I explained to you several months ago, public records requests are governed by NCGS 132 et seq. and are handled by the agencies or custodians directly. They are governed by the agency's policies and procedures regarding public records and are normally responded to within the order the requests are received.

As a token of good faith, we were willing to treat those public records requests as part of discovery in this case - and, as a result, provided you with documents a whole lot sooner. Indeed, we provided them to you several months ago, before the Rule 26 process even began.

If you believe that the parties don't have enough time to fully engage in discovery, then I suggest you ask the Court to revisit the discovery schedule that it just entered. However, at the end of the day, we have asked you for a 30-day extension of time to respond to your discovery requests; we believe that is reasonable. And we are willing to provide you with objections within 10 days.

If you can't agree to that, then please let us know so that we can seek appropriate relief from the court.

Matthew Tulchin
Special Deputy Attorney General
Special Litigation Section
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Please note messages to or from this address may be public records.

On Jun 3, 2024, at 5:00 PM, Rob Lindholm <robert.lindholm@nelsonmullins.com> wrote:

Matt,

I have to admit I don't really understand the issue here. Defendants' responses and objections to our document requests are due today under the Federal Rules. Plaintiffs are willing to give Defendants a 10-day extension on the responses and objections and also to permit rolling document productions to be completed within a reasonable period of time that will allow the parties to complete fact discovery by September 3. I would think that would be sufficient here.

With respect to Defendants' document productions to date, Defendants have produced 60 policies and procedures since we filed our FOIA request 5 months ago. I believe that both the FOIA request and Plaintiffs' document requests call for the production of much more than 60 policies and procedures.

Best,
Rob



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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Monday, June 3, 2024 4:16 PM
To: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum <matthew.lindenbaum@nelsonmullins.com>; Donna Tillis <donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>; Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>
Subject: Re: Amended 26(f) Report (Draft 05.24.24).docx

I believe we can try and get you objections in 10 days, but I don't see any way to separate responses from document production.

And if you are stating that your document requests are similar to, if not identical to, the public records requests, then you should already be in possession of numerous responsive documents.

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On Jun 3, 2024, at 10:01 AM, Rob Lindholm <robert.lindholm@nelsonmullins.com> wrote:

Matt,

I have no issue with giving Defendants a short extension on the responses and objections (7 or 10 days) and agreeing to rolling document productions, but my concern as I stated previously is that we have a September 3, 2024 fact discovery deadline. If Defendants serve responses and objections on July 3, which you have already previewed will object to the scope of many of the requests, Plaintiffs then have 60 days to do all of the following: meet and confer on your objections, attempt to resolve the objections, potentially conduct motion practice regarding the objections, review all the documents Defendants produce including ones that the Court may compel Defendants to produce, and take 10 depositions. And that's assuming no rolling productions – that Defendants produce all the responsive documents on July 3 – and that all of this is done over the summer months when inevitably folks are taking vacations. My point is that I would rather start discussing any objections you have to the scope of the document requests well before July 3 so that we can try to resolve those, and if not, conduct motion practice before the Court with a view towards being able to meet that September 3 fact discovery deadline. To do that we need to have your responses and objections. I will also note that the majority of the document requests are very similar if not identical to the FOIA requests that we sent DPS nearly 6 months ago.

Best,
Rob



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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Monday, June 3, 2024 9:36 AM
To: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum <matthew.lindenbaum@nelsonmullins.com>; Donna Tillis <donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>; Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>
Subject: Re: Amended 26(f) Report (Draft 05.24.24).docx

Rob,

To be clear, we would like a 30-day extension of time to respond to your discovery requests. We don't think that request is unreasonable, considering the sheer number of document requests. This extension includes our objections and responses. We have not approached responding to your voluminous discovery requests with the idea of just serving objections and responses without documents. We don't view that as a good faith effort of engaging in discovery, nor a productive way for the parties to learn all the facts of the case. If you feel differently, please let us know so that we can seek relief from the Court.

Regards,

Matt

<image001.png> **Matthew Tulchin**

Special Deputy Attorney General

Special Litigation Division

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From: Rob Lindholm <robert.lindholm@nelsonmullins.com>

Sent: Monday, June 3, 2024 9:11 AM

To: Tulchin, Matt <MTulchin@ncdoj.gov>

Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum

<matthew.lindenbaum@nelsonmullins.com>; Donna Tillis

<donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>;

Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>

Subject: RE: Amended 26(f) Report (Draft 05.24.24).docx

Thanks Matt. Just to clarify, will we be receiving your responses and objections today? You won't be surprised to hear that I don't agree that the scope of our requests is "extremely broad," but I'm also happy to discuss the scope of the requests after we have those responses and objections on a meet and confer.

Best,

Rob



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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Monday, June 3, 2024 8:45 AM
To: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum <matthew.lindenbaum@nelsonmullins.com>; Donna Tillis <donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>; Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>
Subject: Re: Amended 26(f) Report (Draft 05.24.24).docx

I don't have any problems with that. I also think it might be helpful if you take another look at your requests and think about how you can narrow them down - many of them are extremely broad.

<image001.png> **Matthew Tulchin**

Special Deputy Attorney General

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From: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Sent: Friday, May 31, 2024 3:38 PM
To: Tulchin, Matt <MTulchin@ncdoj.gov>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum <matthew.lindenbaum@nelsonmullins.com>; Donna Tillis <donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>; Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>
Subject: RE: Amended 26(f) Report (Draft 05.24.24).docx

Matt,

I don't have any objections to agreeing to rolling document productions, but I would prefer to start the meet and confer process on any objections to our document requests earlier rather than later in light of the tight discovery deadline we have. I think we could be productive in hopefully resolving any issues with the responses and objections during that 30 day window.

Best,
Rob



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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Friday, May 31, 2024 3:19 PM
To: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum <matthew.lindenbaum@nelsonmullins.com>; Donna Tillis <donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>; Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>
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We would prefer to serve our objections/responses with documents. We think that makes more sense. So 30 days.

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On May 31, 2024, at 2:28 PM, Rob Lindholm
<robert.lindholm@nelsonmullins.com> wrote:

Thanks for the email Matt. Let me check with my team and propose some available days/times next week. In terms of the extension, do you need that for both the responses and objections and corresponding document production or just for document production? Thanks.

Best,
Rob



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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Friday, May 31, 2024 1:46 PM
To: Rob Lindholm <robert.lindholm@nelsonmullins.com>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>; Matthew Lindenbaum <matthew.lindenbaum@nelsonmullins.com>; Donna Tillis <donna.tillis@nelsonmullins.com>; Soren Young <soren.young@nelsonmullins.com>; Rodriguez, Orlando <orodriguez@ncdoj.gov>; Whitaker, Bethel <bwhitaker@ncdoj.gov>
Subject: Re: Amended 26(f) Report (Draft 05.24.24).docx

Rob,
I looks like the discovery motions were referred to Judge Webster. I expect he will enter an order fairly soon. Do you have time next week to discuss the ESI and document production? We will need an extension of time on the RFPs. I am asking for a 30 day extension.

Matthew Tulchin
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Please note messages to or from this address may be public records.

On May 28, 2024, at 5:36 PM, Rob Lindholm
<robert.lindholm@nelsonmullins.com> wrote:

Thanks Matt. Will do.

Best,
Rob



ROBERT L. LINDHOLM PARTNER
robert.lindholm@nelsonmullins.com

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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Tuesday, May 28, 2024 5:32 PM
To: Rob Lindholm
<robert.lindholm@nelsonmullins.com>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>;
Matthew Lindenbaum
<matthew.lindenbaum@nelsonmullins.com>; Donna
Tillis <donna.tillis@nelsonmullins.com>; Soren Young
<soren.young@nelsonmullins.com>; Rodriguez, Orlando
<orodriguez@ncdoj.gov>; Whitaker, Bethel
<bwhitaker@ncdoj.gov>
Subject: RE: Amended 26(f) Report (Draft
05.24.24).docx

Looks good to me. Thanks! You have my permission to
e-sign on our behalf and file along with the 5.5
statement you prepared.

Matt

<image001.png>

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Phone: 919-716-6911
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From: Rob Lindholm
<robert.lindholm@nelsonmullins.com>
Sent: Tuesday, May 28, 2024 5:18 PM
To: Tulchin, Matt <MTulchin@ncdoj.gov>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>;
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<orodriguez@ncdoj.gov>; Whitaker, Bethel
<bwhitaker@ncdoj.gov>
Subject: RE: Amended 26(f) Report (Draft
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Matt,

Your comments are generally fine with us. See the attached redline with our edits that attempt to incorporate your comments. Let me know if you have anything further on this. If not, let me know if we can go ahead and affix your e-signature to it and file along with the 5.5 statement. Thanks.

Best,
Rob



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From: Rob Lindholm
<robert.lindholm@nelsonmullins.com>

Sent: Tuesday, May 28, 2024 2:08 PM
To: Tulchin, Matt <MTulchin@ncdoj.gov>
Cc: Duprey, Michelle <MDuprey@cfcrights.org>;
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<matthew.lindenbaum@nelsonmullins.com>; Donna
Tillis <donna.tillis@nelsonmullins.com>; Soren Young
<soren.young@nelsonmullins.com>; Rodriguez, Orlando
<orodriguez@ncdoj.gov>; Whitaker, Bethel
<bwhitaker@ncdoj.gov>
Subject: RE: Amended 26(f) Report (Draft
05.24.24).docx

Thanks Matt. I'll take a look and get back to you. Once
we are all in agreement, happy to file it on our end if
that's good with you.

Best,
Rob



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From: Tulchin, Matt <MTulchin@ncdoj.gov>
Sent: Tuesday, May 28, 2024 1:34 PM
To: Rob Lindholm
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Cc: Duprey, Michelle <MDuprey@cfcrights.org>;
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<matthew.lindenbaum@nelsonmullins.com>; Donna
Tillis <donna.tillis@nelsonmullins.com>; Soren Young
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<bwhitaker@ncdoj.gov>
Subject: Amended 26(f) Report (Draft 05.24.24).docx

Rob,
I have included a couple of comments and one edit in
the attached. I am available to discuss if
necessary. Thanks for putting it together. Once we get
it finalized, do you plan on filing it or do you need us to
do so?

Matt

<image001.png>

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